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FISCAL IMPACT STATEMENT

LS 6428

BILL NUMBER: HB 1229

NOTE PREPARED: Dec 23, 2011

BILL AMENDED:

SUBJECT: Adoption Subsidies for Children in Foster Care.

FIRST AUTHOR: Rep. Reske

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ GENERAL
☒ DEDICATED
☒ FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill requires payment by the Department of Child Services (DCS) of the costs of certain health-related adoption subsidies for a child in foster care. The bill makes a determination by the DCS with respect to subsidies subject to administrative review.

Effective Date: July 1, 2012.

Explanation of State Expenditures: *Summary:* This bill may increase DCS expenditures to provide court-ordered adoption subsidies for children with special needs who present themselves after an adoption has been finalized.

Additionally, this bill may increase DCS workload to defend staff decisions to deny adoption subsidy payments because the adoptive parents did not prove the adoptive child's condition or cause of the condition existed before the adoption petition was filed. Increases in DCS workload and expenditures are indeterminable.

Additional Information:

Adoption Subsidy Payments: This bill does not apply to children determined to have special needs at the time the adoption petition is filed. The bill would require DCS to pay a subsidy for medical, surgical, hospital, and related expenses for an adoptive child due to a physical, mental, emotional, or medical condition (special needs) under certain conditions. The amount of the subsidy is required to be equal to the amount that would be paid for the medical, surgical, hospital, and related expenses under the Medicaid program.

Under the bill, the DCS would be required to pay the subsidy for adoptive children that present special needs before the adoption is finalized if (1) the condition or cause of the condition existed before the adoption petition was filed, (2) the expenses related to treatment of the condition are paid by the state or a local unit of government before the adoption, and (3) payments from insurance or public money for treatment are not available to the adoptive child or adoptive parents. The DCS reports fostering the adoption of approximately 1,100 IV-E eligible children on average, per year.

Additionally, under the bill, the DCS would be required to pay the subsidy for adoptive children who present special needs after the adoption is finalized if (1) the condition or cause of the condition existed before the adoption petition was filed (as determined by the child's physician) and (2) payments from insurance or public money for treatment are not available to the adoptive child or adoptive parents. The number of children with conditions manifesting after their adoption has been completed, and thus eligible for the subsidy, is indeterminable. However, the DCS does report that for FY 2011, the agency fostered the adoption of 370 children who were not IV-E eligible.

The DCS reports that currently adoption subsidies from the federal IV-E program are provided for adoptive children who present special needs before the adoption is finalized. Therefore, it is expected this bill will affect only those adoptions where children present special needs after the adoption has been finalized. The DCS reports federal guidelines preclude finalized IV-E adoption cases from being reopened for reconsideration of federal IV-E adoption subsidy funds.

Adoption subsidy payments for children who are not IV-E eligible are provided from the Indiana Adoption Subsidy Program. Currently, any adoption subsidy payments for children who are not IV-E eligible are subject to a determination by DCS that sufficient funds are available in the adoption assistance account to provide the additional assistance.

The bill will increase DCS expenditures to the extent that the need for a medical assistance subsidy is not documented at the time an adoption petition is filed, but can be proven during either an administrative or court hearing. The bill would apply to physical, mental, or emotional conditions that may present at any time after the adoption petition has been filed but before an adoptive child either turns 18, becomes emancipated, dies, or the child's adoption is terminated (whichever comes first).

Because the bill requires payment of the adoption subsidy for adoptive children who are not IV-E eligible who present special needs after the adoption has been finalized, whereas currently DCS only provides state adoption subsidies for these children if state funds are available, this bill will increase DCS expenditures to provide adoption subsidy payments for these children. As a result, it is expected the DCS would use other operational funds to finance adoption subsidies that may result under the bill's provisions.

Administrative and Court Hearings: Under the bill, adoptive parents aggrieved by a determination by DCS would be allowed an administrative review under the Indiana Administrative Orders and Procedures Act (AOPA). Additionally, the bill allows a court to order the DCS to pay a subsidy for the support of an adoptive child in an amount not to exceed the monthly cost of care of the child in a foster family home (if the federal IV-E adoption subsidy payment is not enough to cover the monthly cost of care in a foster family home). It is assumed that parents who petition DCS for adoption subsidy payments for adoptive children who are not IV-E eligible who present special needs after the adoption has been finalized will request either an AOPA review or a court hearing.

This provision is expected to increase the work of administrative law judges (ALJs) who provide

administrative reviews under the AOPA. Additionally, the bill is expected to increase the workload of DCS staff to defend staff determinations in both administrative and court hearings where an adoption subsidy payment was denied because the adoptive parents did not prove the adoptive child's condition or cause of the condition existed before the adoption petition was filed. Increases in workload are indeterminable.

Background on Federal and State Financing for Medical Subsidies for Adoptions:

State: The Indiana Adoption Subsidy Program (IASP) subsidy is currently available for a child who is not eligible for federal Title IV-E benefits, but is considered to have special needs due to the presence of a medical condition, or a physical, mental, or emotional handicap prior to the time of adoption. Under the IASP, the state provides the eligible child with Medicaid services to cover the costs of the medical care for the child at the Medicaid federal/state financial participation rate. This state program is required by the federal Adoption and Safe Families Act of 1997 that mandates states to provide health insurance to adoptive children with special needs for whom there is an adoption assistance agreement between the state and the adoptive parent(s) and for whom the state determines could not be placed for adoption without medical assistance based on these special needs.

Federal: The federal Title IV-E Adoption Assistance Program (AAP) in Indiana provides Medicaid services as well as an adoption subsidy for children with special needs to cover payments for related medical expenses. Funds for this program are provided at the Medicaid federal/state financial participation rate. The AAP is an entitlement program for eligible children and is based on the condition and eligibility of the child's parents at the time of the child's removal from the home. Once the DFC determines a child is eligible for IV-E, no redetermination is necessary. Not all children in foster care qualify for AAP. Currently, AAP is granted to children until the age of 21 if the DCS determines it is in the child's best interest due to a preexisting condition.

Medicaid and Title IV-E are jointly funded by the state and federal governments. The state share of program expenditures is approximately 33%. Medicaid medical services and IV-E subsidies are matched by the federal match rate (FMAP) in Indiana at approximately 67%.

Explanation of State Revenues: See *Explanation of State Expenditures* regarding federal reimbursement in the Medicaid and Title-IV-E programs.

Court Fee Revenue: This bill may increase the number of adoptive parents who petition the court for an adoption subsidy payment from the DCS for a child that presents a physical, mental, or emotional condition after the adoption petition has been filed. As a result, the number of civil filings (and civil court fees) is expected to increase.

If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: This bill is expected to increase court caseload to the extent an adoptive parent seeks judicial review of a determination made by the DCS. Increases in workload are indeterminable.

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: DCS; Office of Medicaid Policy and Planning, FSSA.

Local Agencies Affected: Trial courts, city and town courts.

Information Sources: Brady Brookes, DCS.

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